

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SER:NFL:JAX:TL-N-905-99

RWDillard:BAD

MAR 15 1999

date:

to: Chief, Problem Resolution Office (PRO), North Florida District
Attn: Ellen Hartsfield

from: District Counsel, North Florida District, Jacksonville

subject: [REDACTED]
Advisory Opinion

ISSUE

Whether the taxpayer is entitled to a refund for a [REDACTED] income tax overpayment.

CONCLUSION

No.

FACTS

Our conclusion is based on the following facts. On [REDACTED], the taxpayer mailed his [REDACTED] income tax return to the [REDACTED] Service Center. The [REDACTED] Service Center received the return on [REDACTED]. The return included a claim for refund for a [REDACTED] overpayment. The overpayment consisted of income taxes withheld from the taxpayer's wages.

DISCUSSION

A taxpayer must file a claim for refund within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. I.R.C. § 6511(a). The amount that the Internal Revenue Service can refund is limited to amounts paid by the taxpayer within the three years preceding the filing of the claim if the taxpayer has filed a return, or within two years preceding the filing of the claim if the taxpayer has not filed a return. I.R.C. § 6511(b)(2).

Pursuant to I.R.C. § 7502, if a return is mailed on or before its due date but received by the Internal Revenue Service after the due date, the date of mailing is considered the date of filing. In the instant case, the taxpayer's [REDACTED] income tax

return was due on [REDACTED] I.R.C. § 6072. Because the return was postmarked [REDACTED] more than three years after the due date of the taxpayer's [REDACTED] income tax return, the timely mailed is timely filed rule does not apply and the return is considered filed on [REDACTED], the date that the Internal Revenue Service actually received the return.

The [REDACTED] income tax return is also a claim for refund for purposes of I.R.C. § 6511. Treas. Reg. § 301.6402-3(a)(5). The taxes withheld from the taxpayer's [REDACTED] wages are deemed paid on [REDACTED]. I.R.C. § 6513(b)(1). The [REDACTED] deemed payment date is not within the three year period immediately preceding [REDACTED], the date the claim for refund was filed. Thus, although the claim for refund was timely filed, the refund is prohibited by the three-year limitation pursuant to I.R.C. § 6511(b)(2)(A). See Rev. Rul. 76-511, 1976-2 C.B. 428.

This writing contains privileged information. Any unauthorized disclosure of this writing will have an adverse effect on privileges, including the attorney/client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions, please contact the undersigned at 2788, Ext. 46.

BENJAMIN A. de LUNA
District Counsel

By: **ROBERT W. DILLARD**

ROBERT W. DILLARD
Attorney